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IT IS SO ORDERED.

Dated: April 4, 2023



ALAN M. KOSCHIK
U.S. Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re

TOMS KING (OHIO) LLC, *et al.*,

Debtors.¹

Chapter 11

Case No. 23-50001 (AMK)

(Jointly Administered)

Related Docket Nos. 140, 252, 375

**CONSENT STIPULATION AND ORDER (I) ESTABLISHING BREAK-UP FEE AND
EXPENSE REIMBURSEMENT PAYABLE TO STALKING HORSE BIDDER; (II)
ESTABLISHING PAYMENT SCHEDULE FOR BREAK-UP FEE AND EXPENSE
REIMBURSEMENT; (III) DESIGNATING BURGER KING COMPANY LLC AS
BACK-UP BIDDER; AND (IV) GRANTING RELATED RELIEF**

Upon consideration of the agreed stipulation seeking entry of an order (i) modifying the Break-Up Fee and Expense Reimbursement payable to 13th Floor Capital, LLC as the Stalking Horse Bidder, (ii) establishing the payment schedule for the Break-Up Fee and Expense

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's U.S. taxpayer identification number, are: TOMS King (Ohio) LLC (9126); TOMS King LLC (4221); TOMS King (Illinois) LLC (9171); TOMS King (Penn.) LLC (7148); TOMS King (Virginia) LLC (8226); TOMS King (Ohio II) LLC (4081); and TOMS King III LLC (No EIN Number). The Debtors' corporate headquarters is located at 220 N. Smith Street, Suite 305, Palatine, IL 60067.

Reimbursement, (iii) designating Burger King Company LLC as back-up bidder, and (iv) granting related relief; the Court having previously entered its *Order (I) Designating 13th Floor Capital, LLC as a Stalking Horse Bidder; (II) Authorizing Debtors to Enter into Stalking Horse APA; (III) Approving Bidder Protections for Stalking Horse Bidder; and (IV) Amending Bidding Procedures Order to the Extent Necessary* (the “Stalking Horse Order”) [Docket No. 351]² wherein the Court, among other things, approved and designated 13th Floor Capital, LLC and its designees and/or assignees as the Stalking Horse Bidder and approved the Break-Up Fee in the amount of \$775,000.00 and Expense Reimbursement up to \$250,000.00, each as also set forth in the Modified Stalking Horse APA; Debtors having filed their *Notice of Selection of Winning Bidders and Back-Up Bidder* [Docket No. 375] wherein Debtors designated 13th Floor as the Back-Up Bidder and its bid as the Back-Up Bid; this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the General Order No. 2012-07 from the District Court for the Northern District of Ohio, dated April 4, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and due and sufficient notice of the Motion been given under the particular circumstances; and it appearing that no other or further notice need be provided; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties-in-interest; and the Debtors, the Official Committee of Unsecured Creditors (the “Committee”), Bank of America, N.A. (“BOA”), Burger King Company LLC (“BKC”), and the Stalking Horse Bidder having executed the Stipulation and consented to entry of this Order; and after due deliberation thereon;

² Capitalized terms not defined herein shall have the meaning ascribed in the Stalking Horse Order.

and good and sufficient cause appearing therefor,

**ACCORDINGLY, IT IS HEREBY STIPULATED BETWEEN THE PARTIES AND
ORDERED THAT:**

1. Notwithstanding anything to the contrary in the Stalking Horse Order or Modified Stalking Horse APA, (a) “Break-Up Fee” shall mean an amount equal to \$775,000.00; and (b) “Expense Reimbursement” shall mean an amount equal to \$175,000.00 (without any requirement that the Stalking Horse Bidder provide documentation of its fees and expenses in such amount, and with the Debtors, the Committee, BOA, and BKC waiving any right to challenge the amount of the Expense Reimbursement).

2. Immediately upon entry of this Order, the Break-Up Fee and Expense Reimbursement shall be and hereby are deemed fully earned by, and fully payable to, the Stalking Horse Bidder, subject only to the timing of such payment set forth in Paragraph 5 of this Order, and the Stalking Horse Bidder shall be released from any and all other obligations under the Modified Stalking Horse APA and the Stalking Horse Order (provided that nothing herein shall release obligations as to payment of the Break-Up Fee and Expense Reimbursement).

3. Further, notwithstanding anything to the contrary in Debtors’ *Notice of Selection of Winning Bidders and Back-Up Bidder* [Docket No. 375] or otherwise, (a) the Stalking Horse Bidder is not the Back-Up Bidder for any of the Debtors’ stores and/or assets, and (b) BKC is the Back-Up Bidder and the following bids by BKC are the Back-Up Bids:

Stores	Purchase Price
47 non-Virginia stores (see Schedule I)	\$10,882,000.00, comprised of cash payment of \$8,622,000.00 and waiver, in its capacity as franchisor, of \$2,260,000.00 in cure costs otherwise required to be paid in connection with assumption of franchise agreements for the applicable stores
40 Virginia stores (see Schedule II)	\$19,827,000.00 in cash

4. Not later than one (1) business day after entry of this Order, Debtors shall initiate

the return of the Deposit (as defined in the Modified Stalking Horse APA), in full, to the Stalking Horse Bidder.

5. The Break-Up Fee and Expense Reimbursement shall be paid to the Stalking Horse Bidder in good and immediately available funds at the Closings of the sale transactions of the Debtors' stores and/or assets upon the following schedule and in the following amounts:

- a. Upon the Closing of the first-in-time sale transaction, \$500,000.00 shall be paid to the Stalking Horse Bidder; and
- b. Upon the Closing of the second-in-time sale transaction, \$450,000.00 shall be paid to the Stalking Horse Bidder.

6. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry, notwithstanding any provision in the Bankruptcy Rules or the Local Rules to the contrary, and the Debtors may, in their discretion and without further delay, take any action and perform any act authorized under this Order.

7. This Order shall be binding and enforceable against each Debtor and its respective estate, and, as applicable, (i) any of its successor or assigns, (ii) any trustee, examiner, or other representative of the Debtors' estates, and (iii) any other entity vested or re-vested with any right, title, or interest in or to a material portion of the assets directly or indirectly owned by the Debtors or any other person claiming any rights in or control over a material portion of such assets as if such successor was the Debtors.

8. The Court shall retain jurisdiction to hear and determine all matters arising from or related to this implementation of this Order.

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*Counsel to the Official Committee of
Unsecured Creditors of TOMS King (Ohio)
LLC, et al.*

SCHEDULE I

Stores

Store #	Entity	Name	Address
1. 2135	TOMS King (Illinois), LLC	Crystal Lake	250 Virginia Avenue, Crystal Lake, IL 60014
2. 2179	TOMS King (Illinois), LLC	McHenry	4417 W. Elm St., McHenry, IL 60050
3. 5126	TOMS King (Illinois), LLC	Gurnee	5300 Grand Ave., Gurnee, IL 60031
4. 6252	TOMS King (Illinois), LLC	Antioch	338 W. Rte. 173, Antioch, IL 60002
5. 7269	TOMS King (Illinois), LLC	Waukegan	850 North Green Bay Avenue, Waukegan, IL 60085
6. 8240	TOMS King (Illinois), LLC	Algonquin	224 South Randall Rd., Algonquin, IL 60102
7. 9926	TOMS King (Illinois), LLC	Grayslake	159 US Highway 45, Grayslake, IL 60030
8. 11505	TOMS King (Illinois), LLC	Round Lake	250 West Rollins Rd., Round Lake Beach, IL 60073-1324
9. 12090	TOMS King (Illinois), LLC	N. McHenry	2180 North Richmond Road, McHenry, IL 60051
10. 25936	TOMS King (Illinois), LLC	Glendale Heights	199 E. North Ave., Glendale Heights, IL 60139
11. 5226	TOMS King (Ohio), LLC	Dayton	4380 Indian Ripple Road, Dayton, OH 45440
12. 5589	TOMS King (Ohio), LLC	Huber Hts.	7607 Old Troy Pike, Huber Heights, OH 45424
13. 6074	TOMS King (Ohio), LLC	Miamisburg	1244 East Central Ave., Miamisburg, OH 45342
14. 6623	TOMS King (Ohio), LLC	Greenville	423 Wagner Avenue, Greenville, OH 45331
15. 7562	TOMS King (Ohio), LLC	Trotville	5341 Salem Avenue, Trotwood, OH 45426
16. 8206	TOMS King (Ohio), LLC	Beavercreek	3378 Pentagon Park Blvd., Beavercreek, OH 45431
17. 10847	TOMS King (Ohio), LLC	Celina	203 East Market St., Celina, OH 45822-2122
18. 12701	TOMS King (Ohio), LLC	Fairborn	1231 E. Dayton Yellow Springs Rd., Fairborn, OH 45324
19. 392	TOMS King (Ohio), LLC	Niles	5343 Youngstown-Warren Rd., Niles, OH 44446
20. 2919	TOMS King (Ohio), LLC	Columbiana	1100 Village Plz., Columbiana, OH 44408-8479
21. 3227	TOMS King (Ohio), LLC	Boardman	841 Boardman-Poland Rd., Youngstown, OH 44512
22. 5161	TOMS King (Ohio), LLC	Austintown	5310 Mahoning Ave., Austintown, OH 44515
23. 5186	TOMS King (Ohio), LLC	Ravenna	983 E. Main St., Ravenna, OH 44266
24. 5204	TOMS King (Ohio), LLC	Chardon	414 Water St., Chardon, OH
25. 5360	TOMS King (Ohio), LLC	Champion	4359 Mahoning Ave., N.W., Warren, OH 44483
26. 5535	TOMS King (Ohio), LLC	McCartney Rd	685 McCartney Rd., Youngstown, OH 44505
27. 6051	TOMS King (Ohio), LLC	Girard	322 S. State St., Girard, OH 44420-2968
28. 6052	TOMS King (Ohio), LLC	Meridian	3525 Mahoning Ave., Youngstown, OH 44509
29. 6503	TOMS King (Ohio), LLC	Bedford	4 Center Rd., Bedford, OH 44146
30. 6504	TOMS King (Ohio), LLC	Twinsburg	2532 Aurora Rd., Twinsburg, OH 44087
31. 6611	TOMS King (Ohio), LLC	Howland	8100 E. Market St., Warren, OH 44484
32. 7322	TOMS King (Ohio), LLC	Valley View	7903 Granger Rd., Valley View, OH 44125
33. 9511	TOMS King (Ohio), LLC	Salem	1761 East State St., Salem, OH 44460
34. 9830	TOMS King (Ohio), LLC	Cortland	600 South High St., Cortland, OH 44410
35. 9889	TOMS King (Ohio), LLC	Tippecanoe	1403 Boardman Canfield Rd., Youngstown, OH 44512
36. 9932	TOMS King (Ohio), LLC	Ashtabula Mall	3225 N. Ridge East, Ashtabula, OH 44004
37. 10814	TOMS King (Ohio), LLC	Heisley Road	5725 Heisley Rd., Mentor, OH 44060-1829
38. 11260	TOMS King (Ohio), LLC	Poland	3350 Center Rd., Poland, OH 44514-2203
39. 11665	TOMS King (Ohio), LLC	Memphis	6000 Memphis Ave., Cleveland, OH 44144
40. 12402	TOMS King (Ohio), LLC	Hubbard	2437 N. Main St., Hubbard, OH 44425
41. 12725	TOMS King (Ohio), LLC	New Midlothian	15 W. Midlothian Blvd., Youngstown, OH 44507-2023
42. 23534	TOMS King (Ohio), LLC	North Jackson	468 North Bailey Rd., North Jackson, OH 44451
43. 23664	TOMS King (Ohio), LLC	Middlefield	15401 W. High St., Middlefield, OH 44062
44. 24579	TOMS King (Ohio), LLC	Victory Lane	32533 Lorain Rd., North Ridgeville, OH 44039
45. 4192	TOMS King (Penn.), LLC	Southside	1820 E. Carson St., Pittsburgh, PA
46. 11672	TOMS King (Penn.), LLC	N. Fayette	415 Home Dr., North Fayette, PA
47. 12195	TOMS King (Penn.), LLC	N. Versailles	121 Walmart Dr., North Versailles, PA

SCHEDULE II

Store #	Entity	Name	Address
48. 422	TOMS King (Virginia), LLC	Springfield	5701 Backlick Rd., Springfield, VA 22151
49. 1044	TOMS King (Virginia), LLC	Manassas Mall	8330 Sudley Rd., Manassas, VA 20109
50. 1698	TOMS King (Virginia), LLC	Front Royal	412 South St., Front Royal, VA 22630
51. 1730	TOMS King (Virginia), LLC	Winchester	2150 Valley Ave., Winchester, VA 22601
52. 3211	TOMS King (Virginia), LLC	Mitchell Road	1480 Julian Allsbrook Blvd, Roanoke Rapids, NC 27870
53. 3549	TOMS King (Virginia), LLC	Manassas Junction	8889 Centerville Rd., Manassas, VA 20110
54. 5311	TOMS King (Virginia), LLC	N. Battlefield	713 N Battlefield Blvd., Chesapeake, VA 23320
55. 5463	TOMS King (Virginia), LLC	Tacketts Mill	2211 Tacketts Mill Dr., Woodbridge, VA 22192
56. 6001	TOMS King (Virginia), LLC	Chesapeake Crossing	1901 S Military Hwy., Chesapeake, VA 23320
57. 6133	TOMS King (Virginia), LLC	Stafford	269 Garrisonville Rd., Stafford, VA 22554
58. 6220	TOMS King (Virginia), LLC	Potomac/Outside	2701 Potomac Mills Cir., Woodbridge, VA 22192
59. 6600	TOMS King (Virginia), LLC	Emporia	100 Market Dr., Emporia, VA 23847
60. 6875	TOMS King (Virginia), LLC	Mt Jackson	218 Conieville Rd., Mount Jackson, VA 22842
61. 7313	TOMS King (Virginia), LLC	Roanoke Ave	901 Roanoke Ave., Roanoke Rapids, NC 27870
62. 7531	TOMS King (Virginia), LLC	King George	5320 James Madison Pkwy., King George, VA 22485
63. 7923	TOMS King (Virginia), LLC	Doswell	10142 Kings Dominion Blvd., Doswell, VA 23047
64. 8159	TOMS King (Virginia), LLC	Leesburg	970 Edwards Ferry Rd., Leesburg, VA 20176-3317
65. 8261	TOMS King (Virginia), LLC	Fairfax	13040 Fair Lakes Center, Fairfax, VA 22033
66. 9401	TOMS King (Virginia), LLC	Winchester	1513 Martinsburg Pike, Winchester, VA 22603
67. 9928	TOMS King (Virginia), LLC	River Oaks	16551 River Ridge Blvd., Woodbridge, VA 22191
68. 9929	TOMS King (Virginia), LLC	Manassas Airport	9895 Pennsylvania Ave., Manassas, VA 20110
69. 10344	TOMS King (Virginia), LLC	Potomac Falls	45961 Denizen Plz., Potomac Falls, VA 20165-6123
70. 10618	TOMS King (Virginia), LLC	Strasburg	33964 Old Valley Pike, Strasburg, VA 22657
71. 10620	TOMS King (Virginia), LLC	Oak Hill	3035 Centreville Rd., Oak Hill, VA 20171
72. 10825	TOMS King (Virginia), LLC	Wellington	10034 Dumfries Rd., Manassas, VA 20110
73. 11058	TOMS King (Virginia), LLC	Herndon	598 Elden St., Herndon, VA 20170-4720
74. 11135	TOMS King (Virginia), LLC	Reston	2270 Hunters Woods Plz., Reston, VA 20191-2898
75. 11525	TOMS King (Virginia), LLC	Kingstown	5890 Kingstowne Shopping Ctr. Ste. 100, Kingstowne, VA 22315
76. 11814	TOMS King (Virginia), LLC	Annandale	7064 Columbia Pike, Annandale, VA 22003
77. 12041	TOMS King (Virginia), LLC	Dulles	45609 Falke Plz., Dulles, VA 20166-9458
78. 12126	TOMS King (Virginia), LLC	Lorton	1860 Gunston Corner Ln., Lorton, VA 22079
79. 12191	TOMS King (Virginia), LLC	Montclair	5301 Waterway Drive, Montclair, VA 22025
80. 12696	TOMS King (Virginia), LLC	Ashburn	44091 Ashburn Shopping Plz., Ashburn, VA 20147
81. 13295	TOMS King (Virginia), LLC	Gloucester	7166 George Washington Hwy., Gloucester, VA 23061
82. 13639	TOMS King (Virginia), LLC	Centreville	5906 Old Centreville Rd., Centreville, VA 20121
83. 13690	TOMS King (Virginia), LLC	Luray	1034 US Hwy. 211 West, Luray, VA 22835
84. 16932	TOMS King (Virginia), LLC	Rochambeau	759 E. Rochambeau Dr., Williamsburg, VA 23188
85. 17007	TOMS King (Virginia), LLC	Woodstock	334 West Reservoir Rd., Woodstock, VA 22664
86. 21598	TOMS King (Virginia), LLC	Harrison Crossing	5635 Plank Rd. #117, Fredericksburg, VA 22407
87. 23857	TOMS King (Virginia), LLC	Maranto	251 Maranto Manor Drive, Winchester, VA 22602